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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of	:	
Hideki KURATA	:	Confirmation No. 2414
U.S. Patent Application No. 10/565,599	:	Group Art Unit: 3723
Filed: January 24, 2006	:	Examiner: Shay Lynn Karls

APPEAL BRIEF UNDER 37 CFR § 41.37

Date: September 25, 2008

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Appeal Brief is filed pursuant to 37 CFR § 41.37. A credit card authorization form in the amount of \$315.00 is attached herewith for the Appeal brief fee (\$255.00) and one month extension of time (\$60.00).

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01 FC:2402	255.00 OP
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REAL PARTY IN INTEREST

The real party in interest is Appellant.

RELATED APPEALS AND INTERFERENCES

Appellant and Appellant's representative are aware of no other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on, the Board's decision in the pending appeal.

STATUS OF CLAIMS

This is an appeal from the final rejection of claims 1 and 3-6.

Claims 1 and 3-6 are pending in the application and stand rejected.

Claim 2 is canceled.

The rejection of claims 1 and 3-6 is appealed, the claims being set forth in their entirety in the Claims Appendix attached hereto.

STATUS OF AMENDMENTS

The amendments to the claims, presented in Appellant's Amendment filed January 17, 2008, have been entered.

SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 1 recites a drain cleaner (1) comprising:

an equal width strip body (2) having two edges (2b) disposed along a longitudinal direction of the strip body and a handle (4) at a front end (2a) of the strip body (*see specification paragraph [0011], Figs. 1-3*); and

a reel body (3) having a rotary member (31) to which a rear end of the strip body is attached and reeling in or playing out the strip body to or from the rotary member by rotating this rotary member (*see specification paragraph [0012]*);

wherein the strip body (2) is provided with flexible members (20) disposed on both edges of the strip body, the flexible members being

configured to make close contact with an abutting surface along the long direction of the strip body (*see specification paragraph [0011]*).

Independent claim 4 recites a drain cleaner (1) comprising:

an equal width strip body (2) having two edges (2b) disposed along a longitudinal direction of the strip body (*see specification paragraph [0011], Figs. 1-3*);

a reel body (3) having a frame (30), a rotary member rotatably (31) attached to the frame, and a handle (32) attached to the rotary member, a rear end of the strip body (2c) being attached to the rotary member so that the strip body can be withdrawn from the reel body and wound onto the rotary member by rotating the handle (*see specification paragraph [0012]*); and

flexible members (20) disposed on both edges of the strip body, the flexible members having a high ability to closely contact a floor (200) along the longitudinal direction of the strip body (*see specification paragraph [0014]*).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1 and 3 are anticipated under 35 U.S.C. §102(b) by *Mason* (US 3,918,166).

Whether, claims 4-6 are obvious under 35 U.S.C. §103(a) over *Mason* in view of one or more of *King* (US 3,662,969) and *Koizumi et al.* (US 5,406,715).

ARGUMENT

Rejections under 35 U.S.C. § 102(b)

A rejection based on 35 U.S.C. §102 requires every element of the claim to be included in the reference, either directly or inherently. Appellant respectfully submits that *Mason* fails to disclose, teach or suggest all of Appellant's claim limitations.

Claim 1

At the outset, Appellant respectfully submits that the Mason's head circumference measuring device is totally unrelated to the Appellant's recited drain cleaner in both function and structure.

Claim 1 recites, *inter alia*, a drain cleaner provided with an equal width strip body having two edges disposed along a long direction of the strip body, "wherein the strip body is provided with flexible members disposed on both edges of the strip body, the flexible members configured to make close contact with an abutting surface along the long direction of the strip body." (Emphasis added). The Examiner asserts that *Mason's* single elastic belt 14 corresponds to flexible members disposed on both edges of the strip body, as recited by Appellant. Appellant respectfully disagrees.

First, *Mason's* elastic belt 14 is not disposed on an edge of the head circumference measuring device. Appellant respectfully submits that the term "edge" as known to those of ordinary skill in mechanical arts, has several applicable definitions, including "the cutting side of a blade," "the line where an object or area begins or ends," and "the narrow part adjacent to a border." (See Meridian Webster Online Dictionary at <http://www.merriam-webster.com/dictionary/edge>). Appellant submits that none of these, or other definitions of the term "edge," apply to *Mason's* elastic belt 14. Indeed, not only is elastic belt 14 not a cutting edge or a narrow part adjacent to a border, elastic belt 14 can only be described as a side of *Mason's* device, in fact, the widest side.

Furthermore, elastic edge 14 is disposed only one side of *Mason's* measuring device and is not disposed "on both edges of a strip body," as recited in claim 1.

Accordingly, because *Mason* does not disclose, teach or suggest each and every feature recited in claim 1, the rejection of claim 1 under 35 U.S.C. §102(b) is improper. Appellant respectfully submits, therefore, that independent claim 1 is patentable over *Mason*. Reversal of the 102(b) rejection over *Mason* is respectfully requested.

Claim 3

Claim 3 depend from independent claim 1 and is likewise patentable over *Mason* at least for its dependence on claim 1, an allowable base claim, as well as for additional features it recites. Reversal of the 102(b) rejection over *Mason* is respectfully requested.

Rejections under 35 U.S.C. § 103(a)

Claim 4

The rejection of claim 4 as obvious over *Mason* in view of one or more of *King* and *Koizumi* is traversed based on the failure of the applied art to not only disclose, teach or suggest all of Appellant's recited claim features, but in addition fails to present any apparent reason to combine references or modify prior art to create the Appellant's allegedly obvious claim elements.

At the outset, Appellant respectfully submits that the measuring tape tightener in *King* and the tape measuring device in *Koizumi et al.* applied by the Examiner are totally unrelated to the Appellant's recited drain cleaner in both function and structure.

Claim 1 recites, *inter alia*, a drain cleaner provided with an equal width strip body having two edges disposed along a long direction of the strip body, "wherein the strip body is provided with flexible members disposed on both edges of the strip body, the flexible members configured to make close contact with an abutting surface along the long direction of the strip body." (Emphasis added). The Examiner asserts that *Mason's* single elastic belt 14 corresponds to flexible members disposed on both edges of the strip body, as recited by Appellant. Appellant respectfully disagrees.

First, *Mason's* elastic belt 14 is not disposed on both edges of a strip body, as recited in claim 4. Appellant respectfully submits that the term "edge" as known to those of ordinary skill in mechanical arts, has several applicable definitions, including "the cutting side of a blade," "the line where an object or area begins or ends," and "the narrow part adjacent to a border." (See Meridian Webster Online Dictionary at <http://www.merriam-webster.com/dictionary/edge>). Appellant submits that none of these, or other definitions of the term "edge," apply to *Mason's* elastic belt 14. Indeed, not only is elastic belt 14 not a cutting edge or a narrow part adjacent to a border, elastic belt 14 can only be described as a side of *Mason's* device, in fact, the widest side.

Furthermore, elastic edge 14 is disposed only one side of *Mason's* measuring device and is not disposed "on both edges of a strip body," as recited in claim 1. Appellant

further submits that neither *King* nor *Koizumi* remedies the deficiencies of *Mason* as presented above. Specifically, neither *King* nor *Koizumi* discloses, teaches, or suggests “flexible members disposed on both edges of the strip body, the flexible members having a high ability to closely contact a floor along the longitudinal direction of the strip body.”

Still further, on page 4 of the final Office Action (OA) the Examiner admits that *Mason* fails to teach that the reel is wound and unwound by means of a handle. The Examiner relies upon *King* to remedy the deficiencies of *Mason* and alleges that “it would have been obvious to modify the spring-loaded reel of *Mason* for the manual reel of *King* for retracting the tape measure for storage since they are considered to be equivalent structures known in the art,” (see top of page 4 of the final OA). Appellant respectfully disagrees and submits that the combination of *Mason* and *King* is improper, and appears to be based on hindsight reasoning.

The USPTO’s Board of Patent Appeals and Interferences has stated that:

“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” (*In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006) cited with approval in *KSR*, 550 U.S. at 14, 82 USPQ2d).

The head circumference measuring device of *Mason* is a continuous circular tape and is tensioned by a spring. The spring operates to maintain tension on the tape so as to ensure that the tape constantly abuts an encircled device to be measured. *King*, on the other hand, discloses a springless measuring tape tightener that includes a handle to wind the tape on a reel. Appellant respectfully submits that adding a handle to wind a tape, in a same direction onto reel, to a device that already is spring-loaded to wind the tape in the same direction is neither obvious nor is simply a matter of adding a handle. Indeed, adding a winding handle to *Mason* would detract from the benefit supplied by the tensioning spring.

It is improper to use the claimed invention as an instruction manual to piece together the teachings of the prior art so that the claimed invention is rendered obvious. The OA appears to use improper hindsight reconstruction to pick and choose among

isolated disclosures. Accordingly, it is respectfully submitted that the combination is improper.

Appellant respectfully submits, therefore, that the asserted combination of references present no apparent reason to combine references or modify prior art to create the Appellant's allegedly obvious claim elements.

Appellant respectfully submits that claim 4 is patentable not only due to the failure of the combination of applied references to disclose, teach or motivate all recited features of the claims, but are also patentable based upon the improper combination of *Mason* and *King*. Reversal of the rejection of claim 4 is respectfully requested.

Claims 5-6

Claims 5-6 depend variously from claim 4 and are likewise patentable over the combination of applied references at least based upon their dependence on allowable base claim 4, as well as for the additional features they recite.

Incidentally, Koizumi was cited to show a tape measure that is made from glass fiber. Although the tape measure made from glass fiber is disclosed in Koizumi, Koizumi does not rectify the deficiencies of *Mason* in claim 4.


Accordingly, reversal of the obviousness rejections of claims 5-6 is respectfully requested.

CONCLUSION

Accordingly, Appellant respectfully submits that the rejections of claims 1 and 3-6 are in error, and request that the final rejection be reversed.

Respectfully submitted,

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By 

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CLAIMS APPENDIX

1. A drain cleaner comprising:

an equal width strip body having two edges disposed along a longitudinal direction of the strip body and a handle at a front end of the strip body; and

a reel body having a rotary member to which a rear end of the strip body is attached and reeling in or playing out the strip body to or from the rotary member by rotating this rotary member;

wherein the strip body is provided with flexible members disposed on both edges of the strip body, the flexible members being configured to make close contact with an abutting surface along the long direction of the strip body.

3. A drain cleaner as set forth in claim 1, wherein the flexible members are rubber members.

4. A drain cleaner comprising:

an equal width strip body having two edges disposed along a longitudinal direction of the strip body;

a reel body having a frame, a rotary member rotatably attached to the frame, and a handle attached to the rotary member, a rear end of the strip body being attached to the rotary member so that the strip body can be withdrawn from the reel body and wound onto the rotary member by rotating the handle; and

flexible members disposed on both edges of the strip body, the flexible members having a high ability to closely contact a floor along the longitudinal direction of the strip body.

5. A drain cleaner as set forth in claim 4, further comprising a handle attached to a front end of the strip body for holding the front end, wherein said reel body further includes a handle attached to the reel body.

6. A drain cleaner as set forth in claim 5, wherein the strip body is formed of glass fiber.

EVIDENCE APPENDIX

No copies of evidence are appended hereto.

RELATED PROCEEDINGS APPENDIX

No copies of decisions are appended hereto.